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**VENDOR AND PURCHASER — RIGHTS AND LIABILITIES — RISK OF LOSS IN EXECUTORY SALE OF LAND.** — The owner of a storehouse and lot contracted to sell the same to the defendant. A small portion of the purchase price was paid at the time of the contract and one half of the residue was to be paid several months later when a deed and purchase money mortgage were to be executed. Before the date for the conveyance and while the plaintiff by his lessee was in possession the storehouse was destroyed by fire. *Held*, that the loss falls upon the vendor in possession. *Good v. Jarrard*, 76 S. E. 698 (s. c.).

The great majority of the jurisdictions of this country, as well as England, place upon the purchaser of real estate any loss occurring between the making of a contract and its performance. The principal case is interesting in that it sets up the fact of possession as a standard, the court reasoning that the party who has possession and the rights incident to ownership should bear the risk of loss. See 9 HARV. L. REV. 106. For a defense of the prevailing rule, see 1 COL. L. REV. 1. See also 23 HARV. L. REV. 476.

**WITNESSES — COMPETENCY AS TO PARTICULAR MATTERS — BASTARDIZING THE ISSUE: ADMISSIBILITY OF WIFE'S TESTIMONY TO PROVE ADULTERY.** — In an action by the husband for a divorce on the ground of the wife's adultery and for the establishment of the illegitimacy of the child, letters of the wife tending to prove non-access with the husband were offered as evidence on both issues. *Held*, that the evidence is admissible to prove adultery only. *Bancroft v. Bancroft*, 85 Atl. 561 (Del. Super. Ct.).

Husband and wife are generally held incompetent to prove non-access whatever may be the form of legal proceedings and whoever may be the parties thereto. *Rabeke v. Baer*, 115 Mich. 328, 73 N. W. 242. See *Chamberlain v. People*, 23 N. Y. 85, 88; 25 HARV. L. REV. 746. There is no sound basis for this rule, however, and the modern English cases show a tendency to restrict its operation. *In re Yearwood's Trusts*, 5 Ch. D. 545; *Poulett Peerage*, [1903] A. C. 395. See 3 WIGMORE, EVIDENCE, § 2064. If it is to be restricted at all, the refusal of the principal case to apply it where the child's status is not in issue seems entirely justified. See *Tioga County v. South Creek Township*, 75 Pa. St. 433, 437.

**WITNESSES — PRIVILEGE AGAINST SELF-INCrimINATION — EXTENT OF PROTECTION BY IMMUNITY STATUTE.** — To an indictment for revenue frauds the defendant pleaded exemption from prosecution under the federal "Immunity Statute," providing that no person shall be prosecuted on account of any transaction concerning which he may testify under oath in any proceeding under the Interstate Commerce Act. At a grand jury investigation under this act, the defendant had produced the books of the corporation of which he was an officer. His frauds were perpetrated in the corporation business. *Held*, that a verdict directed for the government is proper. *Heike v. United States*, 227 U. S. 131, 33 Sup. Ct. 226.

Under the federal and most state constitutions, a witness cannot be compelled to give testimony incriminating himself. U. S. CONST., AMENDMENT V; N. Y. CONST., Art. 1, § 6. But when a statute gives a witness complete protection within its jurisdiction, one who could otherwise invoke the constitutional privilege cannot refuse to testify. *Brown v. Walker*, 161 U. S. 591, 16 Sup. Ct. 644. See *Counseiman v. Hitchcock*, 142 U. S. 547, 585-586, 12 Sup. Ct. 195, 206. Even without such a statute, if the testimony required only remotely tends to incriminate him, he cannot refuse to testify. *Rudolph v. State*, 128 Wis. 222, 107 N. W. 466; *State v. Thaden*, 43 Minn. 253, 45 N. W. 447. Nor can he refuse to produce the corporate books if he is an officer of the corporation. *Wilson v. United States*, 221 U. S. 361, 31 Sup. Ct. 718; *Dreier v. United States*, 221 U. S. 394, 31 Sup. Ct. 550. *Contra, Rex v. Cornelius*, 2 Str. 1210. The de-

fendant in the principal case, therefore, could clearly have been made to produce these books, even without the statute; but according to a literal interpretation of the statute he would be protected in so doing. But the purpose of the legislature in enacting the statute was not to give needless immunity to criminals, but to obtain evidence formerly unattainable. The court's interpretation that the immunity is only coextensive with the former privilege gives complete effect to the intent of Congress.

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## BOOK REVIEWS.

THE LAW OF QUASI CONTRACTS. By Frederic C. Woodward. Boston: Little, Brown, and Company. 1913. pp. lxi, 498.

Within recent years the subject of quasi-contracts has received an increasing amount of attention. It has been taught in more than a score of law schools, and the work of instruction and investigation has been noticeably stimulated by the excellent case-books of Professor Scott and Professor Woodruff. Law writers and teachers have generally accepted the analysis and classification first made by Professor Ames, and it is gratifying to find that not a few decisions indicate a growing disposition on the part of courts to give recognition to these general principles instead of merely relying on a precedent dealing with the particular situation.

It is twenty years since the well-known treatise of Professor Keener appeared. This pioneer book has unusual merits, and was immediately accepted as an authority. But its very merits have probably discouraged for an unduly long period any attempt to write a second book on the subject which would incorporate the results of recent decisions as well as the contributions which have been made by writers of articles on special topics in various law periodicals.

Professor Woodward's book has, therefore, the initial advantage of being a timely book. The book has, however, more substantial claims to favorable consideration. The author has confined his treatment to those obligations arising upon the receipt of a benefit the retention of which is unjust. The real problem is to ascertain to what extent this obviously vague generalization is entrenched in the law and to define its limits; and accordingly the author has wisely devoted the greater part of the book to a critical examination of the circumstances under which the benefit is received or retained. This classification and order of arrangement are conducive to precision of thought and will probably be found helpful to the student.

It is needless to state that differences of opinion will probably always continue to exist with respect to such unsettled questions as change of position as a defense and the doctrine of *Price v. Neal*.<sup>1</sup> It is nevertheless a service to summarize the points of strength and weakness of the several theories and to indicate the existing state of the authorities. In this task the author has succeeded admirably.

In a book dealing with a subject of such moderate compass it would have been fitting to have included a discussion of some topics to which the author has not referred. Thus, for example, there is no mention of the possibility of an interesting development in the law whereby a minor may, under some circumstances, be held in quasi-contract for non-necessaries supplied to him. A recovery in quasi-contract was allowed in *Hall v. Butterfield*.<sup>2</sup>

The author has done his work carefully and thoroughly. His book cannot

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<sup>1</sup> 3 Burr. 1354.

<sup>2</sup> 59 N. H. 354.